Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-468

THE METROPOLITAN SCHOOL DISTRICTS OF LAWRENCE, WARREN AND WAYNE TOWNSHIPS, MARION COUNTY, INDIANA; THE METROPOLITAN SCHOOL DISTRICT OF DECATUR TOWNSHIP, MARION COUNTY, INDIANA; THE FRANKLIN TOWNSHIP COMMUNITY SCHOOL CORPORATION, MARION COUNTY, INDIANA,

Appellants,

vs.

DONNY BRURELL BUCKLEY AND ALYCIA MARQUESE BUCKLEY, BY THEIR PARENT AND NEXT FRIEND, RUBY L. BUCKLEY, ON BEHALF OF THEMSELVES AND ALL NEGRO SCHOOL AGE CHILDREN RESIDING IN THE AREA SERVED BY THE ORIGINAL DEFENDANTS; UNITED STATES OF AMERICA, ET AL.,

Appellees.

ON APPEAL FROM, OR IN THE ALTERNATIVE ON PETITION FOR WRIT OF CERTIORARI TO, THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPELLANTS' REPLY BRIEF TO "MOTION TO DISMISS APPEALS AND BRIEF IN OPPOSITION FOR RESPONDENT BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS."

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ARGUMENT.

This brief is filed under Rule 24, paragraph 4, in response to "Motion to Dismiss Appeals and Brief in Opposition for

Respondent Board of School Commissioners of the City of Indianapolis" (IPS). In the motion and brief, IPS asserts that the opinions below are based on a unique fact situation unlikely to reoccur and that Appellants have failed to give accurate information regarding the record (by which it apparently means the lower court opinions). (IPS 13)*

In fact, the Indianapolis metropolitan area is typical of metropolitan America. In the period 1950 through 1970 and beyond, the major metropolitan areas in America have been typified by major and continuing shifts of both black and white populations from rural to metropolitan areas, substantial suburban growth, a growing concentration of blacks in the inner cities and adjacent suburbs, and a racial disparity between the inner core subdivisions compared with those nearer the periphery.**

This Court in *Milliken* v. *Bradley*, 418 U. S. 717 (1974), held that these facts, even when accompanied by segregation occurring within the central city, are not a constitutional predicate for an interdistrict remedy. Both courts below to the contrary have held that if segregation has occurred in a single district, then the State, if it makes any change in the political structure of the area, has an affirmative duty to create a racial balance in school enrollments among the existing school districts.

The alleged inaccuracy in Appellants' brief asserted by IPS, lies in a failure to set out certain pertinent language from the District Court's opinion showing the basis for its holding (IPS

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* IPS and Appellants Briefs will be referred to as "IPS ....." and "Law. .....," respectively.

** *Keyes* v. *School District No. 1*, 413 U. S. 189, 223, n. 9 (1973) (Powell, J., concurring).

Milliken v. *Bradley*, 418 U. S. 717, 756, n. 2 (1974), Stewart, J., concurring).

Bureau of the Census, Social and Economic Characteristics of the Population in Metropolitan and Non-Metropolitan Areas: 1970 and 1960, Rpt. P23 No. 37, Table A.

Bureau of the Census, General Demographic Trends for Metropolitan Areas, 1960 to 1970, Rpt. PHC(2)-1, pp. 3-4 (1971).

Taeuber, Negroes in Cities (Aldine Publishing Company 1965) pp. 12-13, 125, 127-128, 152-153, 162-165.

13). In fact, that language is part of a larger excerpt from the District Court's opinion set out in its entirety at pages 9 and 10 of Appellants' jurisdictional statement, and shows with clarity that Court's disregard of *Milliken*. It is as follows:

> "The evidence clearly shows that at the time of the passage of the Uni-Gov Act in 1969, various annexation plans and school consolidation plans had bogged down on the local level because of the aforementioned opposition of the suburban school corporations within Marion County, and their patrons. However, the General Assembly of Indiana, with its members elected on a state-wide basis, was not, or should not have been, subservient to local pressures, and undoubtedly could have legislated a county-wide school system for Marion County as easily as it legislated a county-wide civil government. Under existing law, both Federal . . . and the law of Indiana . . . it had a duty to alleviate the segregated condition then existing in IPS. When the General Assembly expressly eliminated the schools from consideration under Uni-Gov, it signaled its lack of concern with the whole problem and thus inhibited desegregation with [sic] IPS.
>
> "The Court finds that the establishment of the Uni-Gov boundaries without a like re-establishment of IPS boundaries, given all of the other facts and circumstances set out in this and former opinions of this Court, warrants a limited interdistrict remedy within all of Marion County, Indiana, as hereinafter described." (A40-A41.)

This is not a finding that the passage of the 1969 Uni-Gov legislation (1) caused the pre-1969 segregation in IPS, (2) created the relatively fixed nature of the school subdivision boundaries in Indiana and in Marion County in particular, or (3) restricted the expansion of IPS. The predicate for the District Court's remedy is the failure of the Indiana legislature, while legislating civil governmental reforms, to legislate affirmative interdistrict measures to alleviate segregation occurring within a single district, IPS. The failure to legislate the interdistrict remedy becomes the basis for the interdistrict remedy itself—a doctrine nowhere found in *Milliken*.

Similarly, the Court of Appeals' majority recognized that the boundaries of IPS had not expanded under pre-1969 Indiana law (Law. A15), and that the 1969 Uni-Gov legislation and the school reorganization procedures which preceded it by several years were carried out for valid non-racial motives (Law. A10, A13-A14, and A17). It predicated affirmance, however, on the State's failure to include interdistrict school measures within Uni-Gov in 1969 to remedy the segregation in student assignment which the District Court first found in 1971 to have existed for many prior years in the more heavily black IPS. This is an inappropriate basis for a remedy under both *Milliken* and *Washington* v. *Davis*, 48 L. Ed. 2d 597 (1976).

Growth and change are the crucial characteristics of metropolitan America. While we think the courts below are incorrect, the issue they raise, and the uncertainty and social conflict it creates, will not be resolved in the Indianapolis area, or in many other metropolitan areas, until this Court speaks authoritatively once again.

Respectfully submitted,

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